

**NOT FOR PUBLICATION**

**MAY 30 2006**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**SALVADOR PLASENCIA,**

Petitioner - Appellant,

v.

**DAVID L. RUNNELS, Warden,**

Respondent - Appellee.

No. 04-17431

D.C. No. CV-00-02858-CW

**MEMORANDUM\***

Appeal from the United States District Court  
for the Northern District of California  
Claudia Wilken, District Judge, Presiding

Argued and Submitted May 16, 2006  
San Francisco, California

Before: **KOZINSKI** and **FISHER**, Circuit Judges, and **BLOCK\*\***, Senior  
Judge.

Petitioner claims he received ineffective assistance of counsel when his trial  
lawyer misadvised him regarding how long he would have to spend in prison

---

\* This disposition is not appropriate for publication and may not be cited  
to or by the courts of this circuit except as provided by 9<sup>th</sup> Cir. R. 36-3.

\*\* The Honorable Frederic Block, Senior United States District Judge for  
the Eastern District of New York, sitting by designation.

before becoming eligible for parole. We may overturn a state conviction if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

Whether incorrect advice regarding parole eligibility can ever constitute ineffective assistance of counsel is a question that was explicitly left open by the Supreme Court. See Hill v. Lockhart, 474 U.S. 52, 60 (1985) (finding "it unnecessary to determine whether there may be circumstances under which erroneous advice by counsel as to parole eligibility may be deemed constitutionally ineffective assistance of counsel"). Therefore, the California Supreme Court's determination that petitioner received constitutionally adequate assistance of counsel was not contrary to or an unreasonable application of clearly established Supreme Court law.

Furthermore, the California Supreme Court's determination was not an unreasonable application of Strickland v. Washington, 466 U.S. 668 (1984), because the advice given to petitioner was not, under the circumstances, objectively unreasonable. See United States v. Keller, 902 F.2d 1391, 1394 (9th Cir. 1990) (holding that "[counsel's] erroneous prediction regarding parole was not sufficiently deficient to make his plea invalid").

**AFFIRMED.**

Judge Kozinski concurs in the judgment.